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OGC's referral letter takes issue with just seven late-reported independent expenditures comprising \$67,653.88 – less than one quarter of one percent of the Committee's independent expenditure activity for the election cycle. These expenditures were made in the busiest weeks immediately leading up to the election. During these weeks, the Committee timely filed twenty-three separate 48- and 24-hour reports. In just the period covered by the Committee's 30 day Post-General Report, the Committee made two hundred forty-nine independent expenditures totaling \$12,877,201. The Committee also timely filed its October Monthly Report, its Pre-General Report, its Post-General Report and its Year-End Report during and immediately following this busy period.

In preparing its reports filed after Election Day and auditing its own compliance on old reports, Respondents discovered a few items that had not been reported accurately on its original reports. During this process, respondents discovered that two of these expenditures made to Waterfront Strategies and totaling \$54,741 were not timely reported in part because the invoices were received late from the vendor. As a result, on its own initiative, Respondents took steps to collect all information necessary to file amended reports and collect the public record. Once the Respondents obtained all the information necessary, the Committee filed Amended 24-hour reports on December 17, 18, 19 and 21, 2012, bringing the Committee into full compliance with the Act's reporting requirements and completing the public record.

II. Legal Discussion

The Office of General Counsel should not recommend that the Commission find reason to believe in this matter.

Compliance with the Commission's reporting requirements is not governed by a strict liability standard. *Lovely v. Fed. Election Comm'n*, 307 F.Supp. 2d 294, 300 (D. Mass. 2004). Rather, the Commission's regulations state that "[w]hen the treasurer of a political committee shows that best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act." 11 C.F.R. § 104.7(a); *see also* 2 U.S.C. § 432(i). The best efforts safe harbor applies not only to collecting information for reports, but also to reporting information to the Commission. *See Lovely*, 307 F.Supp. 2d at 299 (the "argument that [best efforts] does not apply to the submission of reports conflicts with the plain statutory language.").

Congress's intent in installing the best efforts provision in the Act was not to have the Commission further investigate committees that made only *de minimis* errors in the face of the "very, very rigid" requirements of the statute, but rather to consider such committees in compliance with those requirements. *See* MURs 5971 and 6031, Statement of Reasons of Vice Chairman Petersen and Commissioners Hunter and McGahn (quoting 122 Cong. Rec. 7,196 (1976) (statement of Sen. Stevens)). The sponsor of the best efforts provision, Senator

Packwood, explained the law as an "anti-nit-picking amendment" that "merely says that if a finding is made that [the committee] tried in good faith to try to comply with the law they shall not be harassed." *See id.* (quoting 122 Cong. Rec. 7,922-23 (1976) (statement of Sen. Packwood)). The amendment's author, Senator Stevens, similarly said that the provision was meant to address Congress's concern about the "nit-picking that has been going on about these reports." *Id.* (quoting 122 Cong. Rec. 7,196 (1976) (statement of Sen. Stevens)).

It is the Commission's stated polity to "conclude that a committee has shown best efforts" where, for example, the committee double-checked the information entered on its reports; had trained staff responsible for compiling and submitting reports; and took reasonable steps to file any unfiled reports and amend previously-filed reports. Statement of Policy Regarding Treasurers' Best Efforts to Obtain, Maintain and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31,438-01, 31,439 (June 7, 2007) ("Best Efforts Policy Statement").

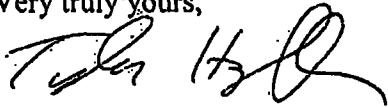
Respondents easily meet the Commission's standard for best efforts. First, Respondents' reporting record demonstrates that they made best efforts to comply with the Act's reporting requirements. In fact, Respondents' independent expenditure reporting for the 2011-2012 cycle was nearly perfect: the Committee correctly and timely reported 99.8% of its \$30,470,335 in independent expenditure activity. This level of compliance necessarily is evidence that the Committee had sound internal controls and trained staff in place to ensure its compliance with the Act's requirements. *See* Best Efforts Policy Statement, 72 Fed. Reg. at 31,440. Moreover, the fact that the OGC referral identifies only one type of error in the Committee's entire compliance operation – the late filing of a handful of 24-hour reports – and not multiple or systemic errors in the Committee's compliance operation also indicates that this is not the case of a committee that failed "to know or understand the recordkeeping and filing requirements of the Act." *See id.*

Here, the small handful of errors that OGC does take issue with happened during a period where the Committee was engaged in an extraordinary amount of pre-election activity. Between October 18 and November 26, 2012, the Committee made two hundred forty-nine independent expenditures totaling \$12,877,201. When the Committee discovered its errors as to a mere seven of these expenditures, it took steps to voluntarily amend its reports to ensure the public record was complete and correct, further demonstrating its best efforts. *See id.* The Committee amended its reports entirely of its own volition; not in response to a complaint, audit, or request for additional information. It defies the law, Commission policy, and common sense to conclude that self-correction for a single type of reporting error, representing a mere fraction of a committee's activities, is grounds to conclude that a committee failed to make best efforts to comply with the Act. To pursue Respondents under these circumstances would constitute just the sort of "nit-picking" Congress meant to prevent when enacting the best efforts standard.

Jeff Jordan
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Accordingly, the Commission should recognize that the Committee's actions are a model for how the Commission should would want any committee to act when it discovers minor errors on old reports. Rather than further penalizing the Committee, and, in the process, discourage other committees from voluntarily amending reports to correct the public record, the Commission should recognize that because the Committee "has exercised ... best efforts, the committee is in compliance." Best Efforts Policy Statement, 72 Fed. Reg. at 31,439 (quoting H.R. Rep. No. 96-442, at 14 (1979)).

Very truly yours,



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